

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

KENNETH L. KELLEY, as the son, next of
kin, and heir at law of JIMMY L. KELLEY,

Plaintiff,

v.

APRIA HEALTHCARE, INC.,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

No. 3:13-cv-096-PLR-HBG

ORDER

This case is before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, Standing Order 13-02, and the referral Order [Doc. 242] from the District Judge.

Now before the Court is the Defendant's Motion to Strike Plaintiff's Rule 26 Experts Michael G. Mariscalco and Alan Lipschultz [Doc. 240]. The parties appeared before the Court on October 19, 2016, for a motion hearing. Attorneys Eric Foust and Dan Stanley appeared on behalf of the Plaintiff, and Attorney Nathan Maurer appeared on behalf of the Defendant. Accordingly, the Court finds the Motion not well-taken, and it is **DENIED**.

In its Motion, the Defendant argues that Plaintiff's Fourth Amended Complaint brings a health care liability action against it for its alleged failure to use reasonable care in providing oxygen and other medical equipment to the decedent for home use. The Defendant submits that because Plaintiff's lawsuit is a health care liability action, the Plaintiff's experts must satisfy the "contiguous" state requirement of Tennessee Code Annotated § 29-26-115(b). The Defendant argues that the Plaintiff's experts do not meet the contiguous state requirement and must be stricken.

The Plaintiff filed a Response [Doc. 243] in opposition, arguing that his action is not a health care liability action. In addition, the Plaintiff argues that the Defendant waived healthcare liability as a defense because it failed to raise it in any Answer. The Plaintiff also notes that the Defendant has not filed an Answer to the Fourth Amended Complaint. Further, the Plaintiff argues that Michael Mariscalco is licensed in Kentucky.

On November 22, 2016, District Judge Reeves entered a Memorandum Opinion and Order [Doc. 282], denying the Defendant's Motion for Summary. In relevant part, Judge Reeves found that the Defendant "is not a health care provider under the Tennessee Health Care Liability Act." Judge Reeves further stated that "any expert witnesses [the Plaintiff] offers will not be required to meet the Act's qualifications." Accordingly, the Court finds the Defendant's Motion to Strike Plaintiff's Rule 26 Experts Michael G. Mariscalco and Alan Lipschultz [**Doc. 240**] not well-taken, and it is **DENIED**.

IT IS SO ORDERED.

ENTER:


United States Magistrate Judge